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Overstayers

Posted on Thursday 15th November 2012

Changes have been made to the Immigration Rules in regards to overstaying; key points to note:

For leave to remain applications decided on or after 1 October 2012, overstayers will be refused permission if they are in breach of the immigration laws unless that breach is an overstay of 28 days or less.

The definition of 'in breach of the immigration laws' has also been inserted into the Rules from 9 July 2012 and is defined as:

"…being without valid leave where such leave is required, or in breach of the conditions of leave."

Therefore, from 1 October 2012, overstayers can only apply again from inside the UK within 28 days of the date of overstay to avoid being refused on this basis.

An application from an overstayer of more than 28 days which is pending consideration before 1 October 2012, and decided on or after 1 October 2012, will be refused leave on this basis.

Applications from an overstayer of fewer than 28 days will not be affected by the new provision

"…the rules regarding overstayer applications only apply at the point of application, not the point that the application is determined. Therefore if the migrant applies having overstayed for less than 28 days, they are not affected by the new provisions, regardless of when their case is determined. This will be made clear in the guidance."

UKBA will have discretion to consider exceptional cases. Applicants who have overstayed by more than 28 days should meet with an advisor to discuss their case and assess if there are any exceptional circumstances which prevented them from submitting their application in-time.

Guidance of what constitutes 'exceptional circumstances' will be assessed by an ISAS Advisor.

If you are an overstayer or at risk of becoming an overstayer you must **contact ISAS (https://intranet.birmingham.ac.uk/as/studentservices/international/contact/index.aspx)** immediately.

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